

HILDRED W. BERNTHAL
SHIRLEY M. BERNTHAL

IBLA 77-14

Decided April 7, 1977

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, denying applicant's petition for reinstatement of oil and gas lease. W 20152! B.

Affirmed.

1. Oil and Gas Leases: Reinstatement! ! Reinstatement: Generally

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays. Where payment is mailed 3 days after the anniversary date and where due to a combination of trips in other vehicles, farm chores, and simple inadvertence, it was left on a car seat for 4 days, the failure to exercise reasonable diligence is not justifiable because the factor causing the delay is not one which is ordinarily outside of the control of the lessee.

APPEARANCES: David B. Meyer, Esq., of Smith Bovill, P.C., Saginaw, Michigan, for appellants.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Appellants, Hildred W. and Shirley M. Bernthal, appeal from a decision of the Wyoming State Office, Bureau of Land Management (BLM), denying their petition for reinstatement of oil and gas lease W 20152! B. The lease was terminated automatically by operation of law, for failure to pay the annual lease rental on or before September 1, 1976, the anniversary date of the lease. 30 U.S.C. § 188(b) (1970); 43 CFR 3108.2-1(a).

Payment of the lease rental was received by the BLM on September 7, 1976. The envelope in which it was sent was postmarked September 3, 1976.

In their petition for reinstatement, the appellants said "Our reason for mailing late is that we went on a business trip and had forgotten to mail the check before we left."

However, in their Statement of Reasons appellants offer the following explanation. They prepared a check for the rental payment on August 27, 1976, and were going to deposit it in a rural mail box, which is located in front of their house. There is no other mail box located in the area. During the evening or early morning hours of August 28th or 29th, their mail box was damaged by vandals, who set off an explosive in it. The damage was discovered by appellant Shirley Bernthal on the morning of August 30, 1976, when she went to place the envelope containing the rental payment in the mail box. On that day Shirley Bernthal was taking their daughter back to college. Remembering that her husband, the appellant Hildred Bernthal, had stated he was going into town on that day, she placed the envelope on the seat of one of their vehicles with instructions to mail the same. However, appellant Hildred Bernthal used a different vehicle to go into town on that day. On August 31, 1976, appellants used, for a trip, a vehicle other than the one containing the envelope with the lease rental payment. On September 1st and 2nd both appellants worked until late at night in order to bring in the bean harvest on their farm.

[1] Reinstatement of an oil and gas lease is allowed when failure to pay the rental on the anniversary date is shown to be either justifiable or not due to a lack of reasonable diligence on the part of the lease. 43 CFR 3108.2-1(c). A failure to exercise reasonable diligence in payment of rental is "justifiable" when caused by a factor which is ordinarily outside of the control of the lessee, and occurring in close proximity to the anniversary date of the lease. Pauline G. Thornton, 17 IBLA 251 (1974). Sufficiently extenuating circumstances must be present so as to affect the lessee's actions. Pauline G. Thornton, *supra*; Louis Samuel, 8 IBLA 268 (1972); see John Rusiniak, 10 IBLA 74 (1973); R. G. Price, 8 IBLA 290 (1972). The word "justifiable" refers to a limited number of instances, where owing to factors ordinarily outside of the individual's control, the reasonable diligence test could not be met. What is clearly not covered are instances of forgetfulness, simple inadvertence or ignorance of the regulations. Louis Samuel, *supra*.

Where lease rental payments have been received late because the appellant was on a business or vacation trip, the Board has

held the failure to exercise reasonable diligence was not justifiable. Maurice E. Mosher, 14 IBLA 287 (1974); Charles C. Sturdevant, 20 IBLA 280 (1975).

Where a combination of trips, farm chores, and simple inadvertence combine and result in the lease payment being left on the seat of a car for 4 days, and not being mailed until 3 days after it is due, the failure to exercise reasonable diligence is not justifiable because the factor causing the delay is not one which is ordinarily outside of the control of the lessee.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Joan B. Thompson
Administrative Judge

